Supreme Court, U.S.
FILED
APR 6 1989
JOSEPH F. SPANIOL, JR.
CLERK

No. 88-1478

In The

Supreme Court of the United States

October Term, 1988

CORPUS CHRISTI TAXPAYERS' ASSOCIATION, TOM HUNT, and JOE O'BRIEN,

Petitioners,

v.

CITY OF CORPUS CHRISTI, and STATE OF TEXAS,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

RESPONDENT CITY OF CORPUS CHRISTI'S BRIEF IN OPPOSITION TO CERTIORARI

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April, 1989

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33 pp

COUNTERSTATEMENT OF QUESTIONS PRESENTED

1) Whether the United States District Court lacks jurisdiction or is barred by res judicata, where Petitioners Complaint alleged they were denied due process by the Courts of the State of Texas in previous litigation, and that they were denied due process by the City of Corpus Christi as to the 1984 tax levy, the subject matter of the previous litigation.

2) Whether the Court of Appeals for the Fifth Circuit correctly imposed sanctions under 28 U.S.C. 1927, FED. R. CIV. P. 11, and FED. R. APP. P. 38.

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RESPONDENT CITY OF CORPUS CHRISTI'S BRIEF IN OPPOSITION TO CERTIORARI

The City of Corpus Christi respectfully prays that the petition for certiorari to review the judgment and opinion of the United States Court of Appeals for the Fifth Circuit be denied.

OPINIONS BELOW

The opinion of United States Court of Appeals affirming the District Court's opinion is included in Petitioners' Appendix, page 1. The United States District Court Opinion dismissing the case of Petitioners for lack of jurisdiction and res judicata, is included in Petitioners' Appendix, page 11. The opinion of the District Court upon remand is included in Respondents' Appendix B. None of these were reported.

The three decisions rendered in the Court system of the State of Texas are included in Petitioners' Appendix, pages 16-24. The Opinion of the District Court of the State of Texas was unreported. (Petitioners' Appendix, p. 16). The Opinion of the Court of Appeals, affirming that decision, was reported at 716 S.W.2d 579. (Petitioners' Appendix, p. 17). The denial of the application for writ of error by the Texas Supreme Court was unreported. (Petitioners' Appendix, p. 24).

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JURISDICTIONAL GROUNDS OVER SUBJECT MATTER

This Court has jurisdiction to review by writ of certiorari the decision of the United States Court of Appeals for the Fifth Circuit by virtue of 28 U.S.C. 1254(1). However, the Court should deny the writ, since no grounds for reversing same have been presented which would fall within the scope of SUP. CT. R. 17: The legal question as to whether a District Court had jurisdiction under these facts has already been decided by this Honorable Court. The

decision of the Court of Appeals is not in conflict with this Court or any Federal Appeals Courts, or State Courts. Further, the opinion of the Court, being soundly based on prior decisions of this Court is correct: A United States District Court had no authorization to review a decision of a State Court, even under the guise of a 1983 claim, such power of review being limited to the United States Supreme Court. The decision of the Court of Appeals awarding sanctions is not in conflict with any decisions of this Court, Federal Courts of Appeals or State Courts, nor is the award an important question of federal law.

The issue as to constitutional right to a hearing is not before this Court; the issue was not decided by the Appellate Court, the case having been summarily dismissed for lack of subject matter jurisdiction. Any issue as to "nullity" of State Court judgments "denying due process" is misplaced. This Honorable Court does not have jurisdiction to review the State Court decision, which was rendered in December of 1986. The Plaintiff has not and cannot ask herein for review of that decision. Only if the State Court decision had been directly appealed, could the Supreme Court address the due process claim, as was done in *Perlata v. Heights Medical Center, Inc.*, 495 U.S. —, 108 S.Ct. 896 (1988).

The Petitioners are here seeking review of the decision of the Court of Appeals for the Fifth Circuit in upholding the District Court's dismissal and awarding sanctions. Review is therefore limited to the issues of jurisdiction, res judicata, and sanctions. Stated another way: can the Petitioners seek in a United States District Court

review of the State Court decision as to an alleged violation of due process which might "nullify" the decision; and is such a suit frivolous?

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COUNTERSTATEMENT OF THE CASE

The City of Corpus Christi denies and refutes Petitioners' Statement of the Case.

The case is accurately explained by the Opinions of the District Court (Petitioners' Appendix, p. 11) and the United States Court of Appeals for the Fifth Circuit. (Petitioners' Appendix, p. 1).

The City specifically denies that Petitioners were denied a hearing by the Corpus Christi City Council. All actions of the City Council were taken at open public meetings of the City Council, Petitioner Joe O'Brien addressed the Council and at a later meeting a representative of the Taxpayers Association addressed the Council on this same matter.

———o———

FEDERAL COURT JURISDICTION

The United States District Court did not have subject matter jurisdiction of the case. (See Argument). The District Court has the jurisdiction necessary in order to determine its own jurisdiction. *Familia de Boom v. Arosa Mercantil, S. A.*, 629 F. 2d 1134 (5th Cir. 1980), rehearing en banc, 634 F. 2d 1355, *cert. denied*, 451 U.S.

1008 (1980). The United States Court of Appeals had jurisdiction of the Appeal pursuant to 28 U.S.C. 1291 (Supp. 1986).

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REASONS FOR DENYING THE PETITION

A. Introduction

This case involves only one major issue: Can the Petitioners relitigate in Federal District Court a cause of action litigated in State Court? The Court of Appeals correctly said no and, in a strongly worded opinion, correctly ordered sanctions to be awarded the Respondents herein, who are once again forced to defend an action without merit. Petitioners did not seek appeal or review of the State Court ruling to the United States Supreme Court but filed a separate suit in the Federal District Courts, through which they now seek relief in the Supreme Court from the State Court ruling. This Court should deny the petition for a writ of certiorari and put an end to this litigation.

The decision of the United States Court of Appeals addressed two issues: 1) That Petitioners' case in the United States District Court was correctly dismissed due to the prior litigation in State Court, and 2) That sanctions should be imposed.

This Court has jurisdiction to review by writ of certiorari the decision of the United States Court of Appeals for the Fifth Circuit by virtue of 28 U.S.C. 1254(1). However, the Court should deny the writ, since no grounds for reversing same have been presented which would fall

within the scope of SUP. CT. R. 17: The question of law at issue has already been settled by this Court. The decision of the Court of Appeals is not in conflict with this Court or any Federal Appeals Courts, or State Courts. Further, the opinion of the Court, being soundly based on prior decisions of this Court, is correct.

The issue decided by the Court of Appeals for the Fifth Circuit has already been decided by this Court: This Court has held that a United States District Court does not have subject matter jurisdiction to review State Court judgments even where Constitutional violations are claimed; such powers of review being limited to the United States Supreme Court; alternatively, the doctrine of res judicata prohibits trial of these issues.

The Petitioners' complaint in Federal Court (Appendix A), that the City of Corpus Christi denied them a public hearing as to the 1984 tax levy and that they were denied due process by the State of Texas Courts, was the subject of an identical suit by the same parties in the Texas State Court. The public hearing issue was the crux of the prior lawsuit. Complaints of an improper summary judgment were raised on appeal and determined by the State Court of Appeals.

Complaints of constitutionality were pled in the petition and ruled on by the trial Court in its decision that the plaintiffs were not entitled to recovery. The issue was waived on appeal, by plaintiff's failure to raise same.

Petitioners claim that the constitutional issues were not addressed by the State Court. However, these issues

were specifically pled and addressed by the Court. This Court has already ruled that a Federal Court cannot review a State Court judgment or review issues addressed or inextricably intertwined in the State Court proceeding. These issues were more than simply intertwined, they were the identical issues before the State Court. The doctrine of res judicata prohibits trial in the Federal Court of the constitutional issues: they were specifically pled in the State Court and were tried or could have been tried with the use of due diligence. The filing of the lawsuit is patently frivolous.

B. Subject Matter Jurisdiction

The United States District Court did not have jurisdiction over Petitioners' alleged cause of action, since the action was an appeal or attack of a State Court judgment.

The United States District Court has no power to review a State Court judgment, even where Plaintiff claims a deprivation under 42 U.S.C. 1983, constitutional grounds, or that such judgment was erroneous.

1) The United States District Court has no authority to review judgments of State Courts. *Atlantic Coast Line R. Co. v. Locomotive Engineers,* 398 U.S. 281, 296 (1970); *Rooker v. Fidelity Trust Co.,* 263 U.S. 413, 415, 416 (1923).

2) Review is not available even under the guise of a violation of 42 U.S.C. 1983. Petitioners argue that the action they pursue in the United States Ditsrict Court is not an appeal of a previous State Court decision, but a separate 42 U.S.C. 1983 cause of action arising out of the

denial of due process as a result of the state judicial proceedings. Even where Petitioner alleges deprivation of property without due process by a decision of a State Court, a Federal District Court has no jurisdiction. *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923); *District of Columbia Court of Appeals v. Feldman and Hickey*, 460 U.S. 462 (1983), (referred to hereinafter as *Feldman*).

The Supreme Court has consistently denied a petition to review the numerous cases of the United States Court of Appeals for the Fifth Circuit which hold "that Federal District Courts do not have jurisdiction under 42 U.S.C. 1983 or any other theory to reverse or modify the judgments of State Courts." *Lampkin-Assam v. Supreme Court of Florida*, 601 F.2d 760 (5th Cir. 1979), citing *Cheramie v. Tucker*, 493 F.2d 586, 589 (5th Cir.), *cert. denied*, 419 U.S. 868 (1974); *Hanna v. Home Insurance Co.*, 281 F.2d 298, 303 (5th Cir. 1960), *cert. denied*, 365 U.S. 838 (1961); *Williams v. Tooke*, 108 F.2d 758, 759 (5th Cir), *cert. denied*, 311 U.S. 655 (1940); *Warriner v. Fink*, 307 F.2d 933 (5th Cir. 1962), *cert. denied*, 372 U.S. 943 (1963); *Manufacturers Record Publishing Co. v. Lauer*, 268 F.2d 187 (5th Cir.), *cert. denied*, 361 U.S. 913 (1959).

3) This lack of jurisdiction is not changed by the form of relief sought. Petitioners claim the District Court suit is not an appeal but a new cause of action. This rule that the District Court cannot review State Court judgments applies even though the relief sought is not in the form of an appeal. In *Feldman, supra* at 468, where the Plaintiffs sought declaratory and injunctive relief, the Court found lack of jurisdiction.

Regardless of how the Petitioners wish to label their cause, the result is the same—Petitioners sought review by

the United States District Court of judicial proceedings already completed by the Courts of the State of Texas.

4) Any issue pled or intertwined with the State Court proceeding is not reviewable by the United States District Court. Petitioners claim that the State Court failed to rule on the Constitutional issues.

a) The Constitutional issues were ruled on by the Court, by its statement denying any form of relief to the plaintiffs. The Constitutional issues were pled: (Petitioners' Appendix, pp. 43, 49). Petitioners stated that they had been deprived of property and liberty without due "cause" of law in violation of Art. 1, Sec. 19, Constitution of the State of Texas and the 14th Amendment to the Constitution. The Court of Appeals noted that since Petitioners had failed to present any argument or authority as to the illegality of the Tax Code, the constitutional issues were not before the Court (Petitioners' Appendix, p. 23). They were therefore ruled on by the Court's decision in favor of the City of Corpus Christi. Any constitutional issue was not addressed by the Texas Court of Appeals *specifically* because the appellants (Petitioners) failed to bring the issue forward (Petitioners' Appendix, page 23). The issue as to whether the Trial Court wrongly ruled in granting the Summary Judgment was specifically addressed by the State Court of Appeals in a lengthy and detailed opinion (Petitioners' Appendix, pp. 17-23) and cannot be relitigated in the United States District Court.

b) Even a challenge to the tax levy or the State Court proceedings on Constitutional grounds not brought to the State Court is not reviewable. This Court has stated that ". . . if the Constitutional claims are inextricably

intertwined in the State Court's denial in a judicial proceeding . . . then the District Court is essentially called upon to review the State Court decision." *Feldman* at 482. "Where determination of . . . [a] claim necessarily involved some review of the merits or its State Appeal, the Constitutional claims are inextricably intertwined." *Pennzoil Co. v. Texaco,* 481 U.S. —, 107 S. Ct. 1519 (1987). In this particular case, Petitioners' claims are not simply "intertwined", but are on their face a *direct challenge* to the prior State Court judgment. The United States District Court may only review challenges to State proceedings "which do not require review of a State Court judgment in a particular case." *Id.*

"Where federal relief can only be predicted upon a conviction that the State Court was wrong, it is difficult to conceive the federal proceeding as, in substance, anything other than a prohibited appeal of the State Court judgment." *Id.*

5) Petitioners' arguments regarding alleged error and lack of due process by the State Courts are only responded to briefly. These issues of error and due process are not before this Honorable Court as they were not decided by the United States District Court nor the Court of Appeals. The Court examined the pleadings and decisions of the State Court, not to determine their validity, but to determine whether the State Court judgment was on the merits and whether it involved identical parties, issues, and claims, to the extent such facts were not revealed by Petitioners' pleadings.

The Complaint on its face showed that Petitioners were afforded due process. Prior rulings of this Court

do not support a due process violation in this instance. Unlike *Peralta, supra,* where the defendant lacked notice and any opportunity to defend, the Petitioners instigated the State action. Petitioners' only claim of failure of due process is that a motion for summary judgment was granted, allegedly in error. Petitioners were granted due process by the Courts; they fully utilized the Court system; they had the opportunity and did appeal. Error in rendition of a judgment does not constitute a violation of due process. The fact that a party loses his fight does not indicate that he was denied a fair fight. Petitioners' bold statement that the State Court judgment is a nullity is false. Their entire cause of action in the Federal Court is a collateral attack seeking to void the judgment. Any alleged error in granting the summary judgment does not nullify the judgment.

6) The multiple cases cited by Petitioners for the proposition that Federal Courts may review State Court decisions only stand for the well settled principle that the United States Supreme Court may review decisions of a State Court for violations of due process. None of the cases cited allows the United States District Court jurisdiction to review State Court decisions. Indeed, this Court has held that Federal appellate review of judgments rendered by State Courts can only occur in this Court. *Pennzoil Co. v. Texaco, Inc., supra.* (Marshall concurring). (Such jurisdiction is only invoked, however, where the appeal or review is direct, unlike this case.) The District Court had no authority to review the prior State Court decisions.

No conflict exists with *Peralta v. Heights Medical Center, Inc.*, 495 U.S. —, 108 S.Ct. 896 (1988), in which

an appeal was taken directly to the Supreme Court, no question of the District Court jurisdiction was addressed by the Supreme Court.

Petitioners cite *Pennzoil Co. v. Texaco, Inc., Id.,* and *Railroad Commissioners of Texas v. Pullman,* 312 U.S. 496 (1941) for the proposition that District Courts have jurisdiction of causes of action under 42 U.S.C. 1983. This is a true statement which is not inconsistent with the opinion of the Court of Appeals that the District Court lacks subject matter jurisdiction of a claim under 42 U.S.C. 1983 where, as in this instance, such claim is simply a hidden review, appeal, or attack of a State Court decision.

The Court of Appeals agreed that Petitioners' remedy should have been to the United States Supreme Court. (Petitioners' Appendix p. 6.). This statement is in agreement with and not in conflict with any cases cited by the Petitioners as to the jurisdiction and authority of the Supreme Court.

The Supreme Court would have been the appropriate forum for a review of the State Court judgment, however, such review was not timely requested.

Petitioner does not contest that the State Court case involved the exact same issues, but instead challenges the State Court ruling on Constitutional and due process grounds. Such attacks on the validity of a State Court judgment are not within the jurisdiction of the Federal District Courts.

C. Res Judicata

Even if the District Court had subject matter jurisdiction in this cause, the principle that the Petitioners'

claims would nevertheless be barred under the doctrine of res judicata, is well established by this Court.

A judgment upon the merits in a suit in a State District Court is res judicata in a suit in the United States District Courts, where the courts have concurrent jurisdiction. *Grubb v. Public Utilities Commission of Ohio,* 281 U.S. 470 (1930). A Federal Court must give the judgments of State Courts the same full faith and credit they have by law or usage in the State Court. *Marrese v. American Academy of Correspondence Surgeons,* 470 U.S. 373 (1985). A State judgment must be given the same res judicata effect in Federal Court that it would be given in the Court of the rendering State. *Migra v. Warren City School District Board of Education,* 465 U.S. 75 (1984). Res judicata applies with full force to civil rights actions. *Id.* at 82; *Blynthe v. Hinckley,* 180 U.S. 333 (1902); *Allen v. McCurry,* 449 U.S. 90, 105 (1980).

Petitioners allege that the State Court did not rule or refused to rule on the Constitutional claim and the Summary Judgment did not include same.

Res judicata applies not only to issues which are litigated but which could have been litigated.

A final judgment is res judicata not only as to matters actually presented to sustain or defeat the right asserted, but also in respect to any other matter which might have been presented, or which could have been raised. *Grubb v. Public Utilities Commission of Ohio,* supra; *Allen v. McCurry,* supra. Any issue not litigated could have been litigated in the State Court litigation, as State Courts

have concurrent jurisdiction with the United States District Courts to determine Constitutional claims. *Blynthe v. Hinkley*, supra; *Allen v. McCurry*, supra at 105. Indeed, Petitioners' lawsuit to void the State Court judgment in order to enforce its rights is an admission that the State Court judgment included an adjudication of those rights.

D. Sanctions

The decision of the Court of Appeals in awarding damages to the City of Corpus Christi is not in conflict with decisions of this Court, the Courts of Appeals, or State Courts. The only case cited as conflicting with the instant case is that of *Pennzoil v. Texaco*, 784 F.2d 1183 (2d cir.), *rev'd*, 107 S.Ct. 1519 (1987). In that case neither the Supreme Court nor the Second Circuit addressed or mentioned imposition of sanctions. No conflict exists. Even prior to the current rules specifying imposition of attorneys fees as sanctions, this Court has recognized the ability of the courts to award expenses, including attorneys fees, to a litigant whose opponent acts in bad faith, or willfully abuses the judicial process. *Roadway Express v. Piper*, 447 U.S. 752 (1980); *Hall v. Cole*, 412 U.S. 1, 5 (1973). Sanctions are especially appropriate and necessary where the law is clear and the defending party has been put to undue expense of multiple litigation.

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CONCLUSION

No valid reason for granting the Writ has been proffered. No decisions of the Court of Appeals or State Courts have been cited by Petitioner as being in conflict with the decision herein. Indeed, the decision of the Court of Appeals is fully supported by decisions of this Honorable Court.

The City of Corpus Christi has already been forced to defend itself in the State District Court, State Court of Appeals, Texas Supreme Court, Federal District Court and United States Courts of Appeals. The position taken by Petitioners is not supported by law. Indeed, the Court of Appeals for the Fifth Circuit found that the "appeal involved legal points not arguable on their merits" and imposed damages against the Petitioners under 28 U.S.C. 1927 and FED. R. APP. P. 38 (Petitioners' Appendix P. 8). The City of Corpus Christi should not be forced to defend itself further.

It is respectfully submitted that the petition for writ of certiorari should be denied.

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RULE 49.2 MOTION FOR INTEREST AND DAMAGES

Respondent, City of Corpus Christi, has shown that the Petition for writ of certiorari is frivolous. The initial filing of this lawsuit and its appeal have already been determined to be frivolous, yet Petitioners persist in pursuing this litigation. The question of jurisdiction has already been determined by this Court and is well settled. Petitioners' claims: that they may file first in State Court

and then in Federal Court, that a summary judgment rendered is a denial of due process, are the result of flawed logic and distortions of the principles cited.

The City of Corpus Christi has been damaged by the filing in this Court as follows:

1) It has been forced to devote additional attorney hours in preparation of this response. Attorney hours are valued at $100.00 per hour according to the District Court, (Respondent's Appendix B) and the City has or will spend 30 hours to the date of filing this response;

2) Costs of printing (Estimated to be $662.00);

3) Interest lost through postponement of the collection of the sanctions awarded here; plus

4) Expenses ofpostage, telecopy and long distance.

It is clear that pursuit of this case is a gross abuse of the judicial process, with demonstrable harm to the City of Corpus Christi. Although this case does not involve significant money damages, the continued litigation has forced the staff to devote significant time and resources to the defense of an important asset: its 1984 tax levy.

Wherefore, the Respondent moves the Court to deny the Petition for Writ of Certiorari or if granted, to affirm the decision of the Court of Appeals for the Fifth Circuit, and upon such denial or affirmance, to allow damages in accordance with Sup. Ct. R. 49.2.

Respectfully submitted,

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APPENDIX A -

Petitioners' First Amended Complaint
in the United States District Court

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

CORPUS CHRISTI TAX-PAYER'S ASSOCIATION, TOM HUNT and JOE O'BRIEN,	)	
Plaintiffs	)	
V.	)	Civil No. C-87-6
CITY OF THE CORPUS CHRISTI and STATE OF TEXAS,	)	
Defendants	)	

FIRST AMENDED COMPLAINT

I—JURISDICTION

1. This is a civil action seeking declaratory and equitable relief to prevent the denial of due process to the Plaintiffs, and to other taxpayers residing in the City of Corpus Christi, Texas. Jurisdiction is invoked under the U.S. Constitution, Fourteenth Amendment, Section 1, and based on deprival of civil rights, 42 USC Sec.1983. There is jurisdiction in the Federal district court system under 28 U.S.C. Section 1331 or 1441. The proper venue for this action in this Court. 28 U.S.C. Sec. 1391(b).

II—PARTIES

2. The Plaintiff, *Corpus Christi Taxpayer's Association*, is a public interest organization formed by tax-

payers of Corpus Christi to represent the interests of its members and other taxpayers in Corpus Christi, Texas. The two individual Plaintiffs, *J. E. O'Brien* and *Tom Hunt*, are residents, homeowners and taxpayers in the City of Corpus Christi, Texas, and they are both members of the public interest organization.

3. The Defendant, *City of Corpus Christi, Texas,* is a city duly organized under the laws of the State of Texas. The second Defendant is the *State of Texas.*

4. Each Defendant is sued separately and in their official capacity as administrators and enforcers of the law. Relief is sought against each Defendant as well as any agents, employees, attorneys, managers and all other persons acting at their direction or under their authority or control.

5. Both Defendants operate necessarily under the laws of the Constitution of the United States [in particular Amendment XIV, Section 1], the Constitution of the State of Texas [in particular Article 8, Section 21], the Texas Property Tax Code [in particular Chapter 26] and certain ordinances of the City of Corpus Christi, Texas, adopted in connection with setting ad valorem tax rates for the year 1984.

III—CLASS ACTION

6. This is a class action brought by the Plaintiffs in their own behalf and on behalf of others similarly situated pursuant to Rule 23 of Federal Rules of Civil Procedure. This class represented by Plaintiffs consists of

(1) all residents of the City of Corpus Christi, Texas who paid ad valorem taxes in the year 1984;

(2) all taxpayers of the State of Texas who have been deprived of a public hearing (as guaranteed by the Texas Constitution) by taxing unit action, such as that here adopted by city ordinance of the City of Corpus Christi, Texas.

The class is so numerous that joinder of all members is impracticable. The questions of law and fact here are common to the class. The defenses of the Defendants, who are representative parties, are typical of the claims or defenses of the class. The representative parties will fairly and adequately protect the interests of the class.

IV—CAUSES OF ACTION

7. The Plaintiffs are given the right by under Article 8, Section 21(a) of the Texas Constitution, to "a public hearing" when as here a political subdivision [the City of Corpus Christi, Texas] increases the property tax rate over that prevailing in the preceding year. There was an increase in the tax rate imposed by the City of Corpus Christi, Texas in the year 1984, as opposed to the year 1983, based on "tax rates" as defined in the "Truth in Taxation" statutes of the state of Texas.

8. No "public hearing" was held by the City officials in connection with the 1984 tax rate increase, as required by the Texas Constitution and "Truth in Taxation" statutes, although Plaintiffs in an appearance before City Council demanded such right. By refusing to hold a hearing, The City deprived Plaintiffs of their civil rights in violation of 42 USC Sec. 1983. The City has consistently over the years followed a pattern of conduct abusive of taxpayers' rights. The City did comply with Plaintiffs'

demand for publication of the 1984 tax notice, but that notice contained false and incorrect data.

9. Upon being deprived of a public hearing, Plaintiffs filed suit against the City in a trial court of the State of Texas having jurisdiction, the 148th District Court of Nueces County, Texas. Both parties filed motions for summary judgment. The trial court granted the City's motion for summary judgment.

10. The trial court held no hearing and received no evidence, although an issue before the Court was the alleged false and incorrect "data" contained in the City's published notice. First, Plaintiffs were denied a hearing on this question of fact. Denial of a hearing by the trial court constituted denial of due process, as Plaintiffs were denied the opportunity to contest the validity of tax rate. Second, Plaintiff's right to present evidence was denied.

11. Further, the trial court failed to rule on issues raised by Plaintiffs' motion for summary judgment, thus denying Plaintiffs the opportunity for a hearing on their motion. Motions of Plaintiffs justified a judgment favorable to Plaintiffs.

12. Upon appeal by Plaintiff to the Thirteenth Supreme Judicial District of Texas all actions of the trial court (its rulings, ignoring of motions, denial of hearing and judgment) were sustained.

13. The Plaintiffs, by application for writ of error, then appealed to the Supreme Court of Texas. That case is identified as No. C-5917. The issues on appeal are fully explained in the two attachments to the Original Complaint, as follows: (1) marked as "Exhibit A of Com-

plaint'' entitled ''Petitioners' Application for Writ of Error'' by Herbert L. Hawkins, Jr. and (2) marked as ''Exhibit B of Complaint'' entitled ''Respondent's Brief in Response to Application for Writ of Error'' by Carol Estes Bray, Assistant City Attorney.

14. The Supreme Court on December 17, 1986 refused the application of Plaintiffs for a writ of error. See attachment marked ''Exhibit C of Complaint''. Such decision has become final.

15. The Texas courts, by denying Plaintiffs any hearing or any trial in their proceeding against the City to obtain a ''public hearing'', deprived Plaintiffs of their civil rights in violation of 42 USC Sec. 1983.

V—PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that the Court grant the following relief:

1. Certify this cause as a class action;

2. Issue an order declaring that the City tax proceedings and State of Texas proceedings here complained of are invalid and void, as being contrary to the U.S. Constitution, Article XIV and in violation of 42 USC Sec. 1983;

3. Issue an order directing the City to hold a ''public hearing'' as to its 1984 tax levy, and further comply with the ''Truth in Taxation'' Texas statutes, as adopted by the legislature and construed by the Texas State Property Tax Board;

4. Direct the Texas authorities to fix for the City for the year 1984 what is a valid tax rate (without any un-

authorized increase) pursuant to the "Truth in Taxation" statutes; which rate is to be used in subsequent years settings of tax rates; and make a refund of excess taxes collected by the City (amount of tax collected by the 1984 rate reduced by the illegal increase over a tax using the 1983 tax rate);

5. Grant such other relief as may be necessary to protect the right of Plaintiffs to a public hearing in the years 1984 and subsequent taxable years;

6. Issue orders to prohibit other taxpayers in the class from being deprived of their right to a "public hearing" in other similar cases involving ad valorem tax levies by other taxing units in Texas.

7. Award Plaintiffs their costs in connection with their efforts to obtain a public hearing, the cost of litigation in state and Federal courts, including costs incurred in litigating the year 1985, and including reasonable attorney's fees related to this proceeding, and such other relief as may appear to the court to be equitable and just.

/s/ GLYNN A. PUGH
GLYNN A. PUGH,
Attorney for Plaintiffs
P.O. Box 4932
Corpus Christi, Texas 78469
(512) 881-8483

APPENDIX B

"Judgment" on remand

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

CORPUS CHRISTI TAXPAYERS ASSOCIATION, TOM HUNT, and JOE O'BRIEN	)	
Plaintiffs	)	
VS.	)	CASE NO. C-87-6
THE CITY OF CORPUS CHRISTI, AND THE STATE OF TEXAS	)	
Defendants	)	

JUDGMENT

(Filed Nov. 17, 1988)

On November 10, 1988, came on before me the issues on remand herein and the Parties appeared with their attorneys of record;

Defendant, City of Corpus Christi has moved for sanctions against the Plaintiffs and their attorneys of record, pursuant to Rule 11, Federal Rules of Civil Procedure.

Additionally, on appeal the Defendant, City of Corpus Christi, moved for damages pursuant to Rules of Appellate Procedure 38. The United States Court of Appeals for the Fifth Circuit found that the Plaintiffs' appeal in-

volved legal points not arguable on their merits, and that the appeal was frivolous, and granted the Motion of the City for damages and remanded the case to this Court for determination of the reasonable attorneys' fees and expenses reasonably incurred by the City of Corpus Christi by virtue of the appeal. That Court also granted the City's motion to assess such costs against Plaintiffs' counsel personally, under 28 U.S.C. 1927 and remanded to this Court the decision as to apportionment of the award.

After hearing evidence and argument of counsel, the Court finds as follows:

I.

Both the attorneys hours testified to by the City of Corpus Christi and the hourly rate of $100 an hour are reasonable.

II.

The reasonable attorneys fees and other expenses reasonably incurred by the City of Corpus Christi by virtue of the appeal of the Plaintiff in this cause are as follows: Attorneys' fees in the amount of $2,600.00 plus costs in the amount of $96.00. These amounts are apportioned as follows: $2,446.00 to be paid jointly and severally by Plaintiffs, Corpus Christi Taxpayers Association, Tom Hunt, and Joe O'Brien and $250.00 to be paid by Plaintiff's Counsel, Glynn Pugh.

III.

The Court further finds that this suit is not warranted by existing law or any good faith argument for its extension, modification or reversal. Therefore, this Court finds

that a violation of Rule 11 exists. The Motion of the City of Corpus Christi for sanctions is hereby granted. In awarding this amount and making an allocation the Court has taken into consideration conflicting public policies. On the one hand Rule 11 requires as public policy the imposition of sanctions substantial in amount to discourage future violations of the Rule. On the other hand, counsel for the Taxpayers has served on a pro bono basis, and this litigation was based on an alleged denial of civil rights, both of which situations involve public policies encouraged by the Federal courts. The Court finds as follows:

Reasonable attorneys fees incurred by the City of Corpus Christi in this litigation prior to appeal are as follows: Attorneys fees in the amount of $2,700,00 which fees the Court finds are reasonable. The Court also finds that payment of such fees should be imposed as sanctions under Rule 11. These fees are apportioned as follows: $250.00 to be paid by Glenn Pugh, Plaintiff's Counsel, personally, and the balance of $2450.00 paid by the Corpus Christi Taxpayer's Association.

Reasonable attorneys fees incurred by the City of Corpus Christi in this litigation on remand are $600.00 to and through this proceeding, which fees the Court finds are reasonable. The Court also finds that such payment of these fees should be imposed as sanctions under Rule 11. These fees are apportioned as follows: $600.00 to be paid jointly and severally by the Corpus Christi Taxpayers Association, Tom Hunt, Joe O'Brien, and Glynn Pugh of which no more than $100.00 is to be collected from Glynn Pugh.

It is therefore ORDERED, ADJUDGED and DECREED that the Motion of City of Corpus Christi for Sanctions under Rule 11 be and is hereby granted, and

1) the Plaintiffs herein, Corpus Christi Taxpayers Association, Tom Hunt, and Joe O'Brien and counsel, Glenn Pugh, jointly and severally are hereby ORDERED to pay to the City of Corpus Christi the sum of $600.00, of which no more than $100.00 is to be paid by Glynn Pugh;

2) the Plaintiff Corpus Christi Taxpayers' Association is hereby ordered to pay additionally the sum of $2450.00 to the City of Corpus Christi; and

3) Glynn Pugh is ordered to pay the sum of $250.00 to the City of Corpus Christi.

Additionally, as damages under Rule 38 and 28 U.S.C. 1927:

4) Plaintiffs Corpus Christi Taxpayers Association, Tom Hunt, and Joe O'Brien are jointly and severally hereby ORDERED to pay the sum of $2,446.00 to the City of Corpus Christi and

5) Glynn Pugh is ordered to pay the sum of $250.00 to the City of Corpus Christi.

IT IS ORDERED that the amounts found and above determined are to be paid to the City of Corpus Christi on or before 90 days from the date of this hearing.

Signed this the 17 day of Nov., 1988.

/s/ H. W. Head, Jr.
Hayden W. Head, Jr.
United States District Judge

APPROVED AS TO FORM:

/s/ Glynn A. Pugh
Glynn Pugh,
Attorney for Plaintiff

/s/ Carol Estes Bray
Carol Estes Bray,
Attorney for Defendants